## Advisory Action Before the Filing of an Appeal Brief

Application No.	Applicant(s)	
09/912,122	MAKOWER ET AL.	
Examiner	Art Unit	
Thomas J. Sweet	3774	

The MALLINO DATE of this communication appears on the cover sheet with the correspondence address THE REPLY FILED 23 June 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.  1.  The reply was filed after a final rejection, but prior to ro on the same day as filing a Notice of Appeal. To avoid abandonment of this appolication, applicant must timely file one of the following replies; (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance, (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods.  2.		Thomas J. Sweet	3774		
THE REPLY FILED 23_June 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.  It is The reply use filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this papication in condition for active the prior to or on the same days as filing a Notice of Appeal and the same days as filing a Notice of Appeal and the same days as filing a Notice of Appeal and the same days as filing a Notice of Appeal in compliance with 37 CFR 4.13 (or 3) a Request for Continued Examination (RCE) in compliance with 37 CFR 4.114. The reply must be filed within one of the following time periods:  a) The period for reply expires	The MAILING DATE of this communication appe	ars on the cover sheet with the d	correspondence add	ress	
1. ☑ The reply was filed efter a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandomment of this application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 41.51; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 41.14. The reply must be filed within one of the following time periods:  a) □ The period for reply expiresmonths from the mailing date of the final rejection.  b) □ The period for reply expiresmonths from the mailing date of the final rejection in one vert. however, with the stutatory period for reply expires on: (1) the mailing date of the final rejection, whichever is later. In no event, however, with the stutatory period for reply expires on: (1) the mailing date of the final rejection, whichever is later. In no event, however, with the stutatory period for reply expires on: (1) the mailing date of the final rejection, whichever is later. In no event, however, with the Stutatory period for reply expires on: (1) the student of the final rejection.  Examiner Note: If box is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MCNTHS for THE FIRM REPLY WAS FILED WITHIN TWO MCNTHS for The FIRM REPLY WAS FILED WITHIN TWO MCNTHS for The FIRM REPLY WAS FILED WITHIN TWO MCNTHS for The FIRM REPLY WAS FILED WITHIN TWO MCNTHS for The FIRM Reply and the date for propagate extension fee under 37 CFR 1.174) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action (2) as many reduce any examination of the shortened statutory period for reply originally set in the final Office action (2) as many reduce any examination of the final rejection, well from the final rejection of the final rejection, well final date in the final distriburing the final final final final final final final final final fi					
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MONTHS OF THE FINAL REJECTION. See MPEP 766.07(f).  Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee have been filed is the date for purposes of appeal form (1) the experization date of the shortened statutory period for reply originally set in field Office station; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any semend patent term adjustment. See 37 CFR 1.70(a), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the date of filing the Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).  AMENDMENTS  3.	<ul> <li>a) The period for reply expiresmonths from the mailing</li> <li>b) The period for reply expires on: (1) the mailing date of this Adno event, however, will the statutory period for reply expire la</li> </ul>	dvisory Action, or (2) the date set forth ter than SIX MONTHS from the mailing	g date of the final rejection	n.	
under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for 'reply originally set in the final Office action; or (2) as set forth in (b) above, if checked, Any reply receved by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).  NOTICE OF APPEAL  2. ☐ The Notice of Appeal was filed on	MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f	).			
filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).  AMENDMENTS  3.	under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the s set forth in (b) above, if checked. Any reply received by the Office later may reduce any earned patent term adjustment. See 37 CFR 1.704(b).	nortened statutory period for reply origi	nally set in the final Offic	e action; or (2) as	
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below); (b) ☐ They raise the issue of new matter (see NOTE below); (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.  NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)). 4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324). 5. ☐ Applicant's reply has oversome the following rejection(s): ☐ Newly proposed or amended claim(s) ☐ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s). 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  The status of the claim(s) is (or will be) as follows:  Claim(s) allowed: ☐ Claim(s) is elected: 33-58 and 61-63.  Claim(s) withdrawn from consideration: ☐ AEFIDAVIT OR OTHER EVIDENCE 8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filling a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e). 9. ☐ The affidavit or other evidence failed after the date of filling a Notice of Appeal, but prior to the date of filling a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.  REQUEST FOR	filing the Notice of Appeal (37 CFR 41.37(a)), or any exter Notice of Appeal has been filed, any reply must be filed wi AMENDMENTS	sion thereof (37 CFR 41.37(e)), to thin the time period set forth in 37	avoid dismissal of the CFR 41.37(a).	e appeal. Since a	
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## Continuation Sheet (PTOL-303) PTOL-303 (Rev. 08-06)

Advisory Action Before the Filing of an Appeal Brief

Application No.

Part of Paper No. 20080701

Continuation of 3. NOTE: The amendedment only adds intended use language to the claims for which the prior art is fully capable of said